

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DONALD JAMES ANSON,

Plaintiff,

v.

07-CV-0035

UNITED STATES OF AMERICA,
UNITED STATES MARSHALS SERVICE,

Defendants.

NOTICE OF MOTION AND MOTION FOR ENLARGEMENT OF TIME

PLEASE TAKE NOTICE that the United States Attorney's Office, Terrance P. Flynn, United States Attorney for the Western District of New York, Lynn S. Edelman, Assistant United States Attorney, of counsel, hereby moves on behalf of the defendants, for an Order enlarging the defendants' time to answer or otherwise move with respect to the plaintiff's complaint, up until and including August 31, 2007, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure. The affidavit of Lynn S. Edelman is submitted in support of the motion and filed herewith.

Dated: Buffalo, New York, July 23, 2007.

TERRANCE P. FLYNN
UNITED STATES ATTORNEY

s/Lynn S. Edelman

BY:

LYNN S. EDELMAN
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716)843-5821
Lynn.Edelman@usdoj.gov

To: Donald James Anson

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DONALD JAMES ANSON,

Plaintiff,

v.

07-CV-0035

UNITED STATES OF AMERICA,
UNITED STATES MARSHALS SERVICE,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) **ss:**
CITY OF BUFFALO)

LYNN S. EDELMAN, being duly sworn, deposes and says:

1. I am an Assistant U.S. Attorney, of counsel to Terrance P. Flynn, United States Attorney for the Western District of New York, assigned to represent the defendants in the above-captioned action.

2. This affidavit is submitted in support of a further motion to enlarge the time for the defendants to answer or otherwise move in response to the above-referenced complaint, up until and including August 31, 2007.

3. A further extension of the time for the defendants to answer or otherwise move in response to the complaint is required because, while I received information from the United States Marshals Service on July 19, 2007 relevant to the complaint, it appears based on the materials received that the discretionary function exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a) may be applicable and bar plaintiff's claim.

4. Before the discretionary function exception may be asserted as an affirmative defense, or serve as a basis for a motion to dismiss, the United States Attorney's Office is required to receive approval from the Department of Justice ("DOJ") to assert this exception.

5. It is reasonably anticipated that I will receive a response to my request to DOJ within the next thirty (30) days. If assertion of the discretionary function exception is authorized by DOJ, I will need some additional time to prepare an appropriate answer to the complaint or prepare a motion to dismiss.

6. I am unable to seek consent of the plaintiff to this request, as he is incarcerated and proceeding pro se.

7. This motion is made prior to the expiration of the current time to answer on July 25, 2007.

8. It is therefore requested that the defendants be granted an extension up until and including August 31, 2007, to answer or otherwise move with respect to plaintiff's complaint.

s/Lynn S. Edelman

LYNN S. EDELMAN
Assistant U.S. Attorney
UNITED STATES ATTORNEY'S OFFICE
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716)843-5821
lynn.edelman@usdoj.gov

Sworn to before me this
23rd day of July, 2007.

s/Laura Rogers

COMMISSIONER OF DEEDS
In And For The City Of Buffalo, New York.
My Commission Expires Dec. 31, 2008.

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07-CV-0035

UNITED STATES OF AMERICA,
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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2007, I electronically filed the foregoing **NOTICE OF MOTION AND MOTION FOR ENLARGEMENT OF TIME** with the Clerk of the District Court using its CM/ECF system.

I hereby further certify that on July 23, 2007, I also mailed the foregoing **NOTICE OF MOTION AND MOTION FOR ENLARGEMENT OF TIME**, by placing said copy in a post paid envelope addressed to the person hereinafter named, at a place stated below, which is the last known address, in an official depository under the exclusive care and custody of the United States Postal Service.

ADDRESSEE

Donald James Anson
12332-055
USP Lewisburg
U.S. Penitentiary
Lewisburg, PA 17837

s/Laura Rogers

LAURA ROGERS